

1 STEPHEN R. MICK (SBN 131569)

stephen.mick@btlaw.com

2 DEVIN STONE (SBN 260326)

dstone@btlaw.com

3 **BARNES & THORNBURG LLP**

2029 Century Park East, Suite 300

4 Los Angeles, California 90076-3210

Telephone: (310) 284-3880

5 Facsimile: (310) 284-3894

6 TODD G. VARE (admitted *Pro Hac Vice*)

todd.vare@btlaw.com

7 DONALD E. KNEBEL (admitted *Pro Hac Vice*)

donald.knebel@btlaw.com

8 JEFF M. BARRON (admitted *Pro Hac Vice*)

jeff.barron@btlaw.com

9 AARON STASER (admitted *Pro Hac Vice*)

aaron.staser@btlaw.com

10 **BARNES AND THORNBURG LLP**

11 11 South Meridian Street

Indianapolis, Indiana 46204-3535

Telephone: (317) 236-1313

12 Facsimile: (317) 231-7433

13 Attorneys for Plaintiff CREATIVE INTEGRATED
14 SYSTEMS, INC.

15 *List of counsel continued on the second page*

16 **UNITED STATES DISTRICT COURT**

17 **CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**

18
19 **CREATIVE INTEGRATED**
20 **SYSTEMS, INC.,**

21 **Plaintiff,**

22 **v.**

23 **NINTENDO OF AMERICA INC.;**

24 **NINTENDO CO., LTD.;**

25 **MACRONIX AMERICA, INC.;**

and MACRONIX

26 **INTERNATIONAL CO., LTD.,**

Defendants.

Case No. 2:10-CV-2735 PA (VBK)

**PLAINTIFF'S MOTION TO
ENFORCE FED. R. CIV.P. 32(A)(6)
AND FED. R. EVID. 611**

Trial: March 4, 2014

Courtroom: 15

Judge: Hon. Percy Anderson

1 “If a party offers in evidence only part of a deposition, an adverse party may
2 require the offeror to introduce other parts that in fairness should be considered
3 with the part introduced, and any party may itself introduce any other parts.” Fed.
4 R. Civ. P. 32(a)(6); *see also* Fed. R. Evid. 106. Defendants have attempted to avoid
5 these Rules by offering revised deposition designations at the last minute and
6 refusing to provide Plaintiff with the opportunity to counter-designate. The most
7 recent set of revised designations from Defendants arrived at 10:52 p.m. on March
8 10, 2014—to be played the next morning, March 11.

9 Defendants’ new designations strip background and context for the
10 remaining testimony, including matters that should, in fairness, be considered by
11 the jury. Pursuant to Fed. R. Civ. P. 32(a)(6) and Fed. R. Evid. 106, Plaintiff has
12 proposed limited counter-designations. All of Plaintiff’s counter-designations
13 reflect testimony that ***Defendants*** had previously designated and which pertain to
14 the testimony that Defendants still want to play for the jury. Defendants have
15 refused to include these appropriate counter-designations.

16 Defendants’ last-minute changes to their designations and refusals to permit
17 Plaintiff to offer counter-designations violate Fed. R. Civ. P. 32(a)(6) and Fed. R.
18 Evid. 106. Defendants’ conduct also violates the Court’s Orders, which provided
19 for an orderly presentation of deposition designations, counter-designations, and
20 objections—all with an opportunity for the Court to rule on any disputes. *See* Dkt.
21 397 (Order dated January 31, 2014). Consequently, Plaintiff respectfully moves the
22 Court for an order enforcing Fed. R. Civ. P. 32(a)(6) and Fed. R. Evid. 106, and
23 barring Defendants from playing any deposition testimony without permitting
24 Plaintiff the opportunity to offer appropriate counter-designations.
25
26
27
28

1 Dated: March 11, 2014

Respectfully submitted:

2 **BARNES & THORNBURG LLP**

3 By: /s/ Jeff M. Barron
4 **JEFF M. BARRON**

Attorneys for Plaintiff Creative Integrated
Systems, Inc.